

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 15, 2010

**JAFFTON RICHARDSON v. DEPARTMENT OF CORRECTION,  
TURNERY CENTER DISCIPLINARY BOARD**

**Appeal from the Chancery Court for Hickman County**

**No. 10-082C      Jeffrey Bivins, Chancellor**

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**No. M2010-01217-COA-R3-CV - Filed January 31, 2011**

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Petitioner, an inmate in the custody of the Tennessee Department of Correction being housed at Turney Center Industrial Complex, filed this petition for writ of certiorari seeking to overturn the decision of the Turney Center disciplinary board convicting him of the offense of possession of a cell phone. The Chancery Court, *sua sponte*, dismissed the petition because the petitioner's verification was not notarized as required by Tenn. Code Ann. § 27-8-106. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Jaffton Richardson, Only, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Mark A. Hudson, Senior Counsel, for the appellee, Department of Correction, Turney Center Disciplinary Board.

**OPINION**

On March 26, 2010, Jaffton Richardson, an inmate in the custody of the Tennessee Department of Correction being housed at Turney Center Industrial Complex in Only, Hickman County, Tennessee, filed this petition for writ of certiorari. He sought to overturn his conviction by the Turney Center Disciplinary Board of the offense of possession of a cell phone, which was affirmed by the Warden at Turney Center on February 17, 2010. The

petition was neither dated nor notarized. The trial court found the omission fatal and dismissed the petition citing *Richmond v. Tennessee Dep't. of Corr.*, No. M2009-01276-COA-R3-CV, 2010 WL 1730144 (Tenn. Ct. App. April 29, 2010).

Tennessee Code Annotated § 27-8-104(a) states: “The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause, *supported by oath or affirmation.*” (emphasis added). Tennessee Code Annotated § 27-8-106 further provides that, “[t]he petition for certiorari may be *sworn to before the clerk of the circuit court, the judge, any judge of the court of general sessions, or a notary public*, and shall state it is the first application for the writ.” (emphasis added).

This appeal on appeal hinges upon whether the trial court had subject matter jurisdiction to entertain a petition for a writ of certiorari that was not executed in compliance with the statutory requirements. This very issue has been decided by this court in several recent cases involving almost identical facts. *See Richmond*, 2010 WL 1730144; *Stewart v. Tennessee Bd. of Prob. and Parole*, No. M2007-01425-COA-R3-CV, 2008 WL 2743606 (Tenn. Ct. App. July 11, 2008); *Jackson v. Tennessee Dep't of Corr.*, 240 S.W.3d 241 (Tenn. Ct. App. 2006); *Wilson v. Tennessee Dep't of Corr.*, No. W2005-00910-COA-R3-CV, 2006 WL 325933 (Tenn. Ct. App. Feb.13, 2006).

In *Richmond*, the petitioner inmate was convicted of a disciplinary offense by the Department of Correction disciplinary board. The inmate filed a petition in the trial court, challenging the legality of the board's decision; however, as here, the petition was not sworn. The Department of Correction promptly filed a motion to dismiss for failure to comply with the statutory verification requirement. After the sixty day limitations period had lapsed, the petitioner filed a motion to amend the petition to satisfy the verification requirement. The trial court found that it did not have subject matter jurisdiction to adjudicate the motion to amend and dismissed the petition. The petitioner appealed and this court affirmed upon the dismissal of Mr. Richmond's petition for lack of subject matter jurisdiction. *Richmond*, 2010 WL 1730144, at \* 4.

In *Stewart v. Tennessee Bd. of Prob. and Parole*, this court held that an unverified petition for writ of certiorari was a fatal deficiency. 2008 WL 2743606, at \*3-4. The *Stewart* decision was based in principal part on rulings in *Jackson v. Tennessee Dep't of Corr.*, 240 S.W.3d 241 and *Wilson v. Tennessee Dep't of Corr.*, 2006 WL 325933.

In *Jackson*, when a prisoner in the custody of the Department of Correction filed a petition for common law writ of certiorari seeking to contest the disciplinary board's findings, the Department filed a motion to dismiss for lack of subject matter jurisdiction,

citing “the petition’s lack of notarization, its failure to state that it was the first application for the writ, and the prisoner’s failure to file it within sixty (60) days of the administrative action.” *Jackson*, 240 S.W.3d at 242. The trial court dismissed the petition for the reasons asserted by the Department, and we affirmed the dismissal. *Id.*

In *Wilson*, we stated that “merely swearing to having knowledge of the allegations contained in the petition is insufficient to qualify as a verification under oath.” 2006 WL 325933, at \*4 (citations omitted). We concluded that, “[i]n order for a petition for a common law writ of certiorari to be valid, the petitioner must verify the contents of the petition *and* swear to the contents of the petition under oath, typically by utilizing a notary public.” *Id.* (citations omitted).

As *Richmond*, *Stewart*, *Jackson*, and *Wilson* all confirm, a petition must contain both a verification and a notarization – if it does not, the trial court lacks subject matter jurisdiction to entertain the petition. *Richmond*, 2010 WL 1730144, at \*4; *Stewart*, 2008 WL 2743606, at \*3; *Jackson*, 240 S.W.3d at 242; *Wilson*, 2006 WL 325933, at \*4.

For the foregoing reasons, we find Mr. Richardson’s petition was fatally deficient. Therefore, the trial court did not err in dismissing the petition.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the petitioner, Jaffton Richardson.

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FRANK G. CLEMENT, JR., JUDGE